

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

REALTY INTERNATIONAL
ASSOCIATES, INC.,

Plaintiff,

vs.

CIVIL NO. 12-116 MV/LFG

CAPITAL FUND SECURITIES,

Defendant.

ORDER DENYING MOTION TO CONTINUE STAY

THIS MATTER is before the Court on Capital Fund Securities' renewed Motion to Continue Stay, filed April 19, 2013 [Doc. 34]. The Court considered the Motion, Response [Doc. 35] and the Reply [Doc. 36.]

In October 2012, the Court granted the parties' joint request for a five-month stay, due to circumstances concerning serious health problems of George McKeon, Capital Fund Securities' principal, and Mr. McKeon's subsequent tragic loss of his daughter. In October 2012, counsel for the parties informed the Court that Mr. McKeon suffered a stroke. During the course of his rehabilitation, his daughter was abducted, sexually assaulted, and murdered. [Doc. 28, Minutes.]

In March 2013, the Court conducted another telephonic status conference concerning the previously imposed 5-month stay that was expiring. Counsel informed the Court that an alleged assailant was arrested for the murder of Mr. McKeon's daughter, and that following a commitment proceeding, the suspect was bound over to stand trial after his plea of not guilty. As a result of those developments, Mr. McKeon's attorneys expressed concern that subjecting Mr. McKeon to this litigation pending completion of the criminal trial in Australia, which was not scheduled until late

summer 2013, would be detrimental to his psychological health. Defendant, therefore, requested that the Court continue the stay until after completion of the trial. [Doc. 31, Minutes.]

The Court stayed the case for an additional 45 days, until April 19, 2013. However, the Court informed counsel it would not continue to stay this proceeding unless defense counsel supplied medical records and affidavit testimony that clearly demonstrated an inability to engage in business activities, and a physical or mental impairment that prevented Mr. McKeon from participating in litigation. [Doc. 33.]

Defendant filed the present motion to continue stay by the deadline of April 19, 2013. In the motion, Defendant updated the Court as to the murder trial in Australia, that was set for September 30, 2013. Defendant also indicated in the motion [Doc. 34, at 3], that the suspect had changed his not guilty plea to a guilty plea. Moreover, Defendant attached, as an exhibit, an ABC News Report, dated April 5, 2013, stating the suspect had pled guilty although the family was not in Court for the plea. According to the Report, however, the family was relieved that the murder case was resolved. [Doc. 34-2.]

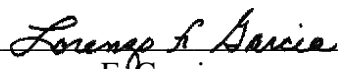
Notwithstanding the ABC Report that Defendant attached to the motion, Defendant continues to seek a stay of this matter, asking that the Court not set the scheduling conference until July 2013. [Doc. 34, at 5.] In support of the request, Defendant submitted a signed report of Mr. McKeon's psychologist, dated March 2013. The psychologist opined, based on his evaluation of Mr. McKeon and the circumstances, that Mr. McKeon should avoid all major stressors until after the conclusion of the murder trial. Yet, inexplicably, Defendant fails to explain that the psychologist's report predated the latest information that the suspect pled guilty and that no murder trial would proceed. Thus, the original reason for seeking an additional stay no longer exists.

Plaintiff opposes any further stay of proceedings in this case and argues that Defendant did not supply the required evidence to support a continued stay. [Doc. 35.] In the reply, Defendant asserts that Plaintiff will not be prejudiced by an additional brief stay until July and contends there is nothing that “needs to be” or “must be done” before July. Again, Defendant neglects to mention that the original reason for the request to stay proceedings, *i.e.*, the murder trial, is no longer at issue since the trial is vacated.

After careful consideration of the pleadings and attachments, the Court finds no basis to continue a stay of proceedings in this case. While Mr. McKeon is understandably impacted by his daughter’s tragic death, there is no longer a trial scheduled that would serve to place stress on Mr. McKeon, as originally asserted. Moreover, the attachments to the motion do not establish that McKeon is unable to proceed with this litigation at this time. Indeed, the psychologist only recommended that Mr. McKeon encounter no additional stressors until after the murder trial; that proceeding is essentially completed.

Accordingly, the Court denies Defendant’s motion to continue the stay until July 2013. While the Court is not setting a scheduling conference, it will issue an order setting new case management deadlines to complete discovery and motion practice, and ready this case for trial.

IT IS SO ORDERED.


Lorenzo F. Garcia
United States Magistrate Judge